

COUNCIL MEETING MINUTES FEBRUARY 9, 2015

0:00 **DATE** COUNCIL CHAMBERS, CITY HALL, CITY OF WOODBURN, COUNTY OF MARION, STATE OF OREGON, FEBRUARY 9, 2015

CONVENED The meeting convened at 7:01 p.m. with Mayor Figley presiding.

ROLL CALL

| | |
|-----------------------|---------|
| Mayor Figley | Present |
| Councilor Carney | Present |
| Councilor Lonergan | Present |
| Councilor Schaub | Present |
| Councilor Morris | Present |
| Councilor Ellsworth | Present |
| Councilor Alonso Leon | Present |

Staff Present: City Administrator Derickson, City Attorney Shields, Finance Director Head, Police Chief Russell, Economic and Development Director Hendryx, Assistant City Administrator Row, Public Works Director Scott, Captain Garrett, Captain Alexander, Communications Coordinator Horton, City Recorder Pierson

0:01 **PRESENTATION**

Police Chief Russell, Police Captain Garrett and Police Captain Alexander provided a review of 2014 Crime and Ordinance statistics, 2014 Woodburn Police Department accomplishments and the Departments goals and objectives for 2015.

1:33 **BUSINESS FROM THE PUBLIC**

Nancy Kirksey, 1049 McKinley St., announced that the Woodburn Kiwanis Mayor's breakfast will take place on February 24 at 7:30 a.m. at the Methodist Church. She added that the speaker will be Catherine JH Miller and tickets can be purchased at Piper's, the Woodburn Chamber, Long Bros., Yes Graphics or at www.woodburnkiwanis.org.

1:36 **CONSENT AGENDA**

A. Woodburn City Council minutes of January 26, 2015,
B. Woodburn City Council Executive Session minutes of January 26, 2015,
C. Woodburn Library Board minutes of January 14, 2015,
D. Crime Statistics through December 2014
Lonergan/Ellsworth... adopt the Consent Agenda. The motion passed unanimously.

1:37 **COUNCIL BILL NO. 2974 - AN ORDINANCE AMENDING THE WOODBURN DEVELOPMENT ORDINANCE TO ESTABLISH ZONING REGULATIONS FOR MARIJUANA DISPENSARIES AND DECLARING AN EMERGENCY**

Lonergan introduced Council Bill No. 2974. Recorder Pierson read the two readings of the bill by title only since there were no objections from the Council. Councilor Ellsworth asked the City Attorney if he believes the ordinance is worded correctly for what they are

COUNCIL MEETING MINUTES FEBRUARY 9, 2015

trying to accomplish and City Attorney Shields answered that he believes it is. On roll call vote for final passage, the bill passed unanimously. Mayor Figley declared Council Bill No. 2974 duly passed.

CITY ADMINISTRATOR'S REPORT

City Administrator Derickson stated that he took a tour of Heritage Elementary School and was impressed with the operation they have and appreciates the level of service they provide the community. He suggested that City Councilors take the time to take the tour and see how the school operates.

MAYOR AND COUNCIL REPORTS

Councilor Alonso Leon thanked the police officers for their thorough presentation.

Councilor Carney thanked the police officers as well and thanked Mayor Figley for nominating him for the Urban Renewal committee.

Councilor Lonergan stated that he appreciates our police department.

Mayor Figley stated that she agrees with the City Administrator that people should take a tour of the schools to see how they look and how they run.

Councilor Ellsworth stated that she would like to invite the Chief of Police, his staff and the community to attend the Relay for Life Kick Off Brunch which takes place from 10:00 am to noon February 21 at the Woodburn Health Center. She added that the Relay for Life celebration will take place at Centennial Park on July 10 and 11.

Councilor Schaub stated that she appreciates the Woodburn Police Department and that she has also visited the schools.

Councilor Morris stated that he is concerned about how packed the schools are but added that they are showing impressive results.

ADJOURNMENT

Lonergan/Ellsworth... meeting be adjourned. The motion passed unanimously. The meeting adjourned at 8:53 p.m.

APPROVED _____
KATHRYN FIGLEY, MAYOR

ATTEST _____
Heather Pierson, City Recorder
City of Woodburn, Oregon

Woodburn Police Department

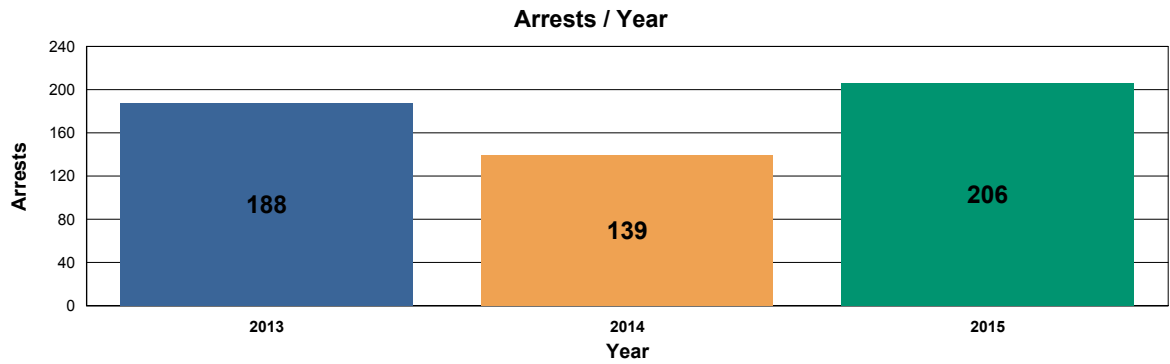
MONTHLY ARRESTS BY OFFENSES JANUARY THRU DECEMBER 2015

| CHARGE DESCRIPTION | Jan | Total |
|--|-----|-------|
| AGGRAVATED ASSAULT | 2 | 2 |
| ASSAULT SIMPLE | 6 | 6 |
| BURGLARY - RESIDENCE | 1 | 1 |
| CHILD ADBANDOMENT | 1 | 1 |
| CRIME DAMAGE-NO VANDALISM OR ARSON | 1 | 1 |
| CURFEW | 2 | 2 |
| CUSTODY - MENTAL | 8 | 8 |
| DISORDERLY CONDUCT | 2 | 2 |
| DRIVING UNDER INFLUENCE | 9 | 9 |
| DRUG LAW VIOLATIONS | 15 | 15 |
| DWS/REVOKED-MISDEMEANOR | 1 | 1 |
| FAIL TO DISPLAY OPERATORS LICENSE | 2 | 2 |
| FORGERY/COUNTERFEITING | 1 | 1 |
| FRAUD - BY DECEPTION/FALSE PRETENSES | 1 | 1 |
| FRAUD - CREDIT CARD/AUTOMATIC TELLER MACHINE | 1 | 1 |
| FUGITIVE ARREST FOR ANOTHER AGENCY | 42 | 42 |
| GARBAGE LITTERING | 1 | 1 |
| HIT AND RUN-MISDEMEANOR | 2 | 2 |
| IDENTITY THEFT | 1 | 1 |
| INTIMIDATION /OTHER CRIMINAL THREAT | 1 | 1 |
| MINOR IN POSSESSION | 1 | 1 |
| MOTOR VEHICLE THEFT | 2 | 2 |
| OTHER | 9 | 9 |
| RECKLESS DRIVING | 2 | 2 |
| RECKLESSLY ENDANDERING | 1 | 1 |
| RESTRAINING ORDER VIOLATION | 1 | 1 |
| ROBBERY - HIGHWAY | 1 | 1 |
| ROBBERY - OTHER | 1 | 1 |
| RUNAWAY | 3 | 3 |
| THEFT - FROM MOTOR VEHICLE | 1 | 1 |
| THEFT - OTHER | 9 | 9 |
| THEFT - SHOPLIFT | 26 | 26 |
| TRAFFIC VIOLATIONS | 7 | 7 |
| TRESPASS | 5 | 5 |
| VANDALISM | 29 | 29 |
| VEHICLE RECOVERD FOR OTHER AGENCY | 3 | 3 |
| WEAPON - CARRY CONCEALED | 3 | 3 |
| WEAPON - EX FELON IN POSSESSION | 1 | 1 |
| WEAPON - POSSESS ILLEGAL | 1 | 1 |

| | Jan | Total |
|------------|-----|-------|
| 2015 Total | 206 | 206 |
| 2014 Total | 139 | 139 |
| 2013 Total | 188 | 188 |

Woodburn Police Department

MONTHLY ARRESTS BY OFFENSES JANUARY THRU DECEMBER 2015



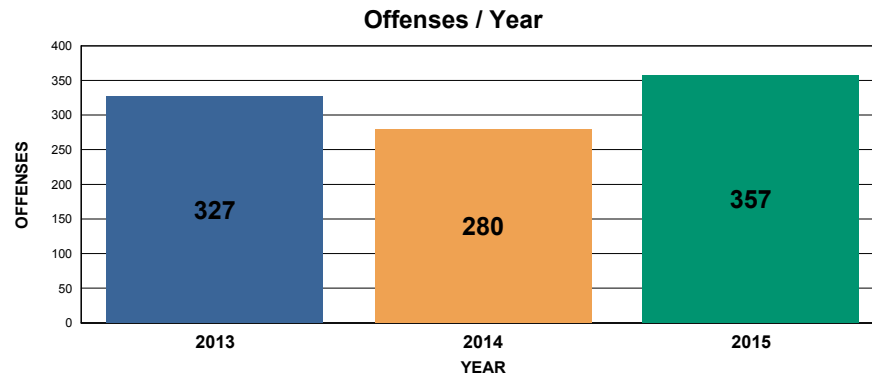
Woodburn Police Department

MONTHLY CRIMINAL OFFENSES JANUARY THRU DECEMBER 2015

| CHARGE DESCRIPTION | Jan | Total |
|---|------------|--------------|
| AGGRAVATED ASSAULT | 1 | 1 |
| ARSON | 1 | 1 |
| ASSAULT SIMPLE | 9 | 9 |
| BURGLARY - BUSINESS | 1 | 1 |
| BURGLARY - OTHER STRUCTURE | 4 | 4 |
| BURGLARY - RESIDENCE | 6 | 6 |
| CRIME DAMAGE-NO VANDALISM OR ARSON | 16 | 16 |
| CURFEW | 1 | 1 |
| CUSTODY - MENTAL | 7 | 7 |
| DISORDERLY CONDUCT | 5 | 5 |
| DRIVING UNDER INFLUENCE | 10 | 10 |
| DRUG LAW VIOLATIONS | 15 | 15 |
| DWS/REVOKED-MISDEMEANOR | 1 | 1 |
| FAIL TO DISPLAY OPERATORS LICENSE | 2 | 2 |
| FORCIBLE RAPE | 1 | 1 |
| FORGERY/COUNTERFEITING | 3 | 3 |
| FRAUD - BY DECEPTION/FALSE PRETENSES | 2 | 2 |
| FRAUD - CREDIT CARD/AUTOMATIC TELLER MACHINE | 2 | 2 |
| FUGITIVE ARREST FOR ANOTHER AGENCY | 35 | 35 |
| HIT AND RUN FELONY | 1 | 1 |
| HIT AND RUN-MISDEMEANOR | 9 | 9 |
| IDENTITY THEFT | 2 | 2 |
| INTIMIDATION /OTHER CRIMINAL THREAT | 4 | 4 |
| MINOR IN POSSESSION | 1 | 1 |
| MISCELLANEOUS | 4 | 4 |
| MOTOR VEHICLE THEFT | 15 | 15 |
| OTHER | 9 | 9 |
| PROPERTY - FOUND LOST MISLAID | 2 | 2 |
| RECKLESS DRIVING | 2 | 2 |
| RESTRAINING ORDER VIOLATION | 1 | 1 |
| ROBBERY - HIGHWAY | 1 | 1 |
| ROBBERY - OTHER | 2 | 2 |
| RUNAWAY | 8 | 8 |
| SEX CRIME - INCEST | 1 | 1 |
| SEX CRIME - MOLEST (PHYSICAL) | 2 | 2 |
| SEX CRIME - SEXUAL ASSAULT WITH AN OBJECT | 1 | 1 |
| STOLEN PROPERTY - RECEIVING,BUYING,POSSESSING | 1 | 1 |
| THEFT - BICYCLE | 2 | 2 |
| THEFT - BUILDING | 4 | 4 |
| THEFT - FROM MOTOR VEHICLE | 9 | 9 |
| THEFT - MOTOR VEHICLE PARTS/ACCESSORIES | 2 | 2 |
| THEFT - OTHER | 22 | 22 |
| THEFT - SHOPLIFT | 30 | 30 |
| TRAFFIC VIOLATIONS | 13 | 13 |
| TRESPASS | 5 | 5 |
| UNAUTHORIZED ENTRY INTO MOTOR VEHICLE | 11 | 11 |
| VANDALISM | 65 | 65 |
| VEHICLE RECOVERD FOR OTHER AGENCY | 2 | 2 |
| WEAPON - CARRY CONCEALED | 2 | 2 |
| WEAPON - EX FELON IN POSSESSION | 1 | 1 |
| WEAPON - POSSESS ILLEGAL | 1 | 1 |
| | Jan | Total |
| 2015 Total | 357 | 357 |
| 2014 Total | 280 | 280 |
| 2013 Total | 327 | 327 |

Woodburn Police Department

MONTHLY CRIMINAL OFFENSES JANUARY THRU DECEMBER 2015



Woodburn Police Department

ORDINANCE VIOLATIONS

JANUARY - DECEMBER 2015

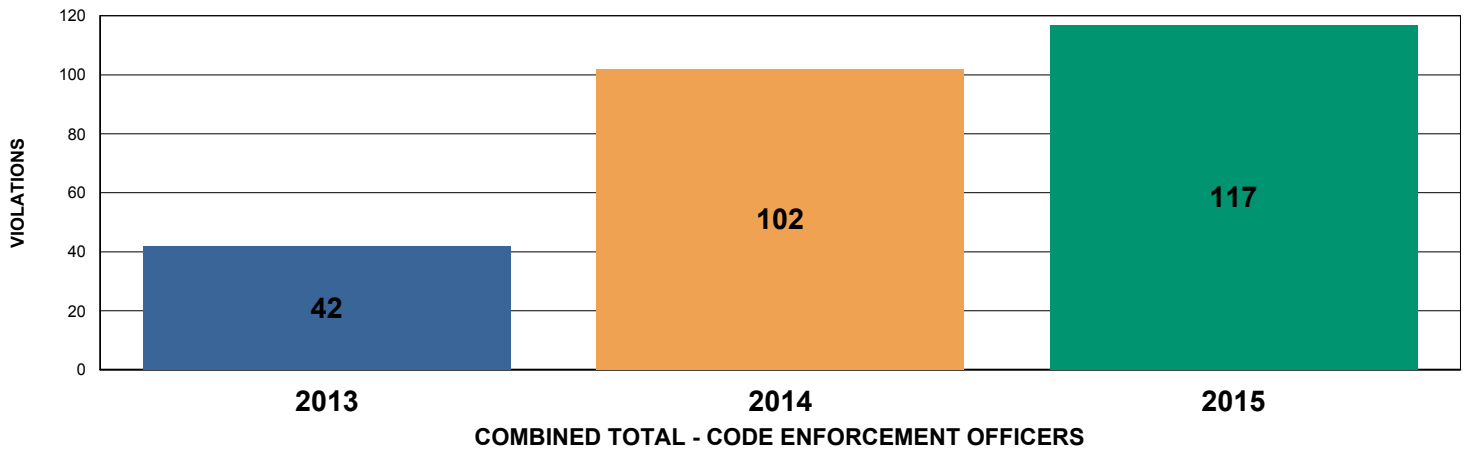
2/17/2015

| Ordinance Discription | Jan | Total |
|--------------------------------|------------|------------|
| Animal Complaint | 49 | 49 |
| Ordinance - Abate/Nuisances | 2 | 2 |
| Ordinance - Abandoned Vehicles | 9 | 9 |
| Ordinance - Abate Graffiti | 48 | 48 |
| Ordinance - Oth Violation | 28 | 28 |
| 2015 Total | 136 | 136 |

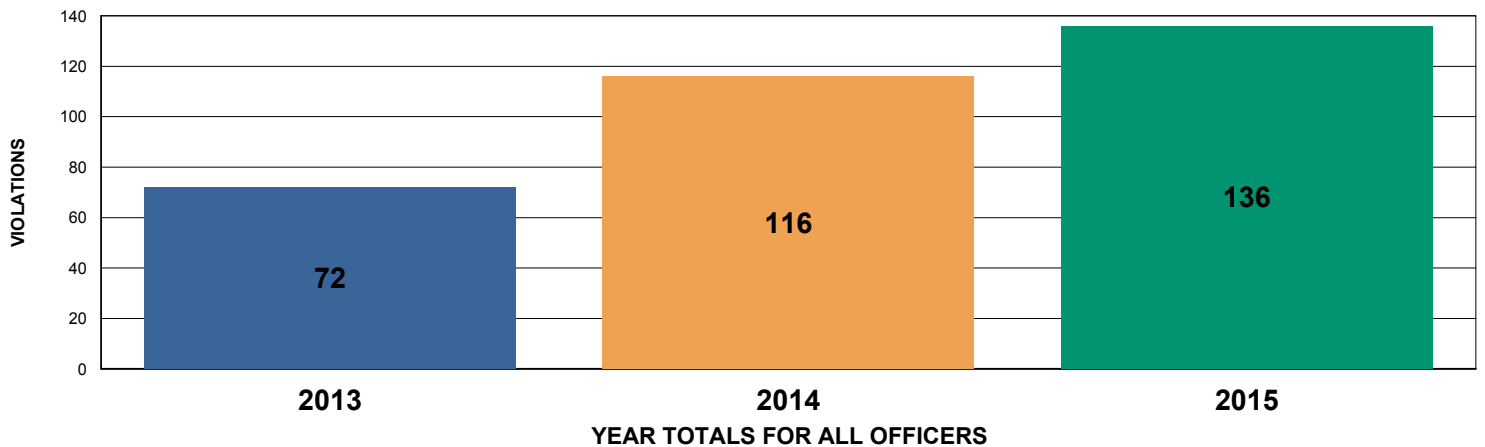
| | | |
|-------------------|------------|------------|
| 2014 Total | 116 | 116 |
|-------------------|------------|------------|

| | | |
|-------------------|-----------|-----------|
| 2013 Total | 72 | 72 |
|-------------------|-----------|-----------|

Ordinance Violations / Code Enforcement Officers



Ordinance Violations / Year





Agenda Item

February 23, 2015

TO: Honorable Mayor and City Council

FROM: Scott Derickson, City Administrator
N. Robert Shields, City Attorney
Scott D. Russell, Chief of Police

SUBJECT: **Policy Direction for Regulating Medical Marijuana Dispensaries**

RECOMMENDATION:

That the Council provide policy direction on whether it wants to adopt any additional non-land use regulations for medical marijuana dispensaries as permitted by state law.

Council should be aware that this topic is specific to medical marijuana and not recreational marijuana, which pursuant to Measure 91 will be regulated by the Oregon Liquor Control Commission (OLCC). The distinction between these two laws is discussed in more detail below.

BACKGROUND:

State law framework

Today there are more than 70,000 Oregon Medical Marijuana Program (the OMMP) cardholders in Oregon. In January 2014, HB3460 became law allowing dispensaries to provide medical marijuana to them. The law allows medical marijuana dispensaries to be sited under certain restrictions in commercial and agricultural zones throughout the state.

By statute, the Oregon Health Authority (the OHA) is tasked with managing the OMMP, which now includes licensing, inspecting and regulating medical marijuana dispensaries. In general, facilities may be located on commercial, industrial, mixed use and agriculturally-zoned properties. Facilities cannot be co-located with OMMP grow sites or use locations. Dispensaries also cannot be located within 1,000 feet of each other or of a private or public elementary, secondary or career school attended primarily by minors. They must follow the

Agenda Item Review: City Administrator ☒ City Attorney ☒ Finance ☒

Secretary of State's business rules, which are related to safety and health, and the dispensary owner must pass a criminal background check.

However, the law provided very little direction to local government on how to effectively manage community expectations for safety, security and livability with the opening of marijuana dispensaries. In response to these concerns, the 2014 Oregon Legislature enacted SB1531 providing the legal authority for local governments to regulate an OMMP dispensary's hours of operation ("time"), location ("place") and operations ("manner"). So that these issues could be further researched and resolved, SB1531 specifically allowed for the imposition of up to a 12 month locally enacted moratorium on the operation of any new dispensaries.

Local government actions

In February 2014, pursuant to SB1531, the City Council imposed a one year moratorium on the siting of any medical marijuana facilities and initiated an amendment to the Woodburn Development Ordinance ("WDO") to establish appropriate zoning regulations for medical marijuana facilities. With assistance from the Planning Commission and input from the public, these zoning regulations have now been finalized. At its January 26, 2015 meeting, the City Council directed staff to prepare an ordinance amending the WDO to be considered for passage.

In the fall of 2014, the cities of Salem and Keizer (and many other Oregon cities) enacted ordinances that not only controlled the zoning of medical marijuana dispensaries but also established "time, place and manner" regulations. These cities enacted their regulations after extensive review of the law and the needs and desires of their citizens.

Although initially the City Council took only a zoning approach to the medical marijuana dispensary issue, staff believes that it is important that the City Council be aware of other local government actions, especially those in Marion County. As the third largest City in the County, the adoption of a Woodburn ordinance that has some uniformity with the other city's ordinances would provide an equal playing field where dispensaries would not be encouraged, or discouraged, from locating based upon the absence of a local ordinance. This uniform approach would also provide an additional basis to defend against any claims brought against the cities if their authority for the regulatory ordinance is challenged.

Using the regulatory ordinances regarding medical marijuana that are currently in force in Salem and Keizer, staff has drafted an ordinance and is prepared to discuss it with the City Council. An emergency clause was included in the ordinance because the moratorium imposed by the City Council on the siting of medical marijuana facilities will expire soon. If, as a policy matter, the City Council wants to adopt an ordinance addressing this issue it is important that this be done immediately so that any new medical marijuana facility is subject to these local regulations.

Workshop scheduled

At the January 26, 2015 meeting, after a discussion with staff, the City Council scheduled a February 23, 2015 workshop concerning this topic. In a workshop setting, the City Council will have the opportunity to determine if it desires to include any "time, place and manner" regulations for medical marijuana dispensaries in addition to the zoning regulations already drafted. Staff believes now is the time to make such a determination since once a dispensary is open and operating under the WDO zoning provisions, the enforcement of any new regulations will prove extremely difficult.

DISCUSSION:

Public safety concerns

Since 1998 the OMMP has been in operation as Oregon sought to allow medical marijuana use by patients in the most need. What began as a program intended for around 5,000 Oregon patients (original estimates by the framers of the OMMP) has now grown to an enterprise of over 70,000 cardholders. Further, the number of cardholder applications is reported to be drastically rising since the passage of Measure 91 as people are hoping to avoid some of the state and local taxes that have been aimed at recreational marijuana.

Public safety concerns with dispensaries in other cities and states have included the potential for (and actual occurrence of) armed robberies for drugs and money at the dispensaries, illegal sales of drugs to non-medical users, extortion of dispensary owners/operators by criminal organizations, etc.

Therefore, the police department has some basic public safety concerns about dispensary hours, locations and operations. These concerns revolve around three basic goals:

1. The protection of the public (especially children);
2. The prevention of crime and violence related to dispensary operations;
3. The exclusion of criminal drug trafficking organizations from using OMMP dispensaries as a front for their business.

While the OHA has regulatory authority over the OMMP, local experience is that the OHA has been underfunded and overtasked with administering the OMMP program even prior to the creation of dispensaries. It is the combined opinion of most local law enforcement that the OHA will not be able to adequately manage the OMMP dispensary program once it reaches its full height of operations. Proponents will say that the OHA has done an excellent job of running the OMMP, but critics will counter that the OHA has been extremely challenged in effectively managing the OMMP and medical marijuana dispensaries.

In August 2014, the *Oregonian* newspaper reported that the OHA had issued 158 dispensary licenses and 49 provisional dispensary licenses (remember this is during the period in which the moratorium was permitted) and that the OHA had conducted only 58 inspections on dispensaries and found at least 48 of them had violations. Two dispensaries were closed during these inspections. A flood of new dispensaries is expected as the moratoriums are expiring and it remains to be seen how effective the OHA will be in regulating all of them.

Proposed regulations

Due to the current situation, staff believes local regulation is necessary to reach the mentioned public safety goals. Attached for the City Council's consideration and to serve as a point of discussion is a draft ordinance. The draft ordinance was created in collaboration with the City Administrator's Office, the City Attorney's office, the Woodburn Police Department, Community Development and the Finance Department. Ideally, local regulation should include the following areas, which are addressed by the referenced sections of the proposed ordinance:

Enforcement:

- Requirement to follow all of the OHA rules (Sections 4 A 5 and 9 A);
- Local compliance inspections to confirm the OHA rule compliance (Section 8 C);
- Local denial of a new or renewal application and permit suspension or revocation based upon reasonable criteria (Sections 4 and 5).

Operations:

- Requirement to follow all of the OHA operations rules (Section 6 A);
- Restricting hours of operations from 10 a.m. to 8 p.m. (Section 6 F);
- No drive through or walk up access (Section 6 T);
- Require the OMMP Card to be displayed to gain entry to facility (Section 6 S);
- No access to minors (under 18) unless they are medical marijuana qualifying patients under state law (Section 6 M) ;
- Allowing facility access for government officials at any time (Section 8 C);
- Allowing City access to business records to assure compliance with the OHA rules and any applicable ordinance (Section 8);
- Follow the OHA rules for edibles (Section 9 A).

Security:

- All the OHA security requirements must be met (commercial door locks, alarm, video surveillance, etc.) (Section 9 A);
- Availability and daily use of a "cash drop safe" on site (Section 6 P);
- Allow law enforcement access to video surveillance when officer makes written request and asserts it is related to a criminal investigation (Section 8 B).

Public Transparency:

- Facility owner must register by name with the City (Section 4).

Health:

- Ventilation and filtration (Fungus Aspergillus)(Section 6 G);
- Require certification that adequate measures have been taken to protect the public and specification of what measures were taken (Section 6 H).

Criminal Background Checks:

- The OHA requires that the owner must submit to a background check and that a limited class of convictions occurring within last 5 years are disqualifying from licensure.
- Local ordinance permit disqualification should include owner and all employees, and include any felony or drug related misdemeanor conviction (Section 6 N).

Fees:

- Permit fee should cover at a minimum initial site plan review, background checks and site visits;
- Annual fee should do full cost recovery for at least one annual site visit.

Locations:

Already addressed in the recent amendment to the Woodburn Development Ordinance adopted by the City Council.

Status of recreational marijuana (Measure 91)

In November 2014 (at the same time local governments were in the process of considering and enacting medical marijuana regulations) Oregon voters passed Measure 91 allowing the use of marijuana and marijuana-infused products by persons 21 years of age beginning July 1, 2015. The measure tasks the Oregon Liquor Control Commission (OLCC) with developing rules and regulations for overseeing the growth, manufacture, processing and sale of marijuana and marijuana-infused products.

The OLCC has until January 2016 to develop rules and regulations and then begin to accept applications for four types of licenses:

Producers, who will cultivate retail cannabis;

Processors, who will buy cannabis from producers and convert it into other marijuana products, like supercritical CO2 wax and shatter;

Retailers, who will buy marijuana and marijuana products from producers and processors to sell to consumers; and marijuana

Wholesalers, who will be licensed to purchase cannabis and related products to sell to retailers and other non-consumers.

The OLCC Board Chair has indicated that the OLCC does not anticipate issuing any of these types of licenses until it has a complete regulatory structure and staff in place sometime in late 2016 or 2017. Measure 91 does allow local communities to "opt out" of allowing recreational sales but, only by local initiative process in a statewide general election year, which would become effective the following January 1. Therefore, the earliest "opt out" date for any community in Oregon would be January 1, 2017 and, depending how the courts rule, any OLCC licenses granted prior to that date could be considered vested or "grandfathered" in.

There are currently 11 bills active in the Oregon Legislature related to marijuana, and its regulation under Measure 91 or the OMMP. The OLCC is currently in a public comment and fact finding stage and is not yet ready to indicate policy direction.

Finally, the OMMP and Measure 91 have very different quantity and type possession restrictions which are outlined in an attached document (OMMP v. Measure 91) for your information.

At this time it appears to staff that no local ordinance would have an impact on recreational marijuana as it was adopted by the Oregon voters by the passage of Measure 91. Furthermore, we do not know when (or if) the Oregon Legislature and the OLCC will finish all their work on this topic and give guidance to local governments on how the two programs interact.

FINANCIAL IMPACT:

Staff believes that the implementation of HB3460 will have a significant but unknown impact on City resources. This impact is anticipated to be primarily to the Police, Community Development, Finance and Legal Department's budgets.

COUNCIL BILL NO. 2975

ORDINANCE NO. 2527

AN ORDINANCE ADOPTING A MEDICAL MARIJUANA PERMIT PROCESS; IMPOSING REGULATIONS ON THE OPERATION OF MEDICAL MARIJUANA FACILITIES; AND DECLARING AN EMERGENCY

WHEREAS, Section 4 of the Woodburn City Charter provides:

Section 4. POWERS OF THE CITY. The City shall have all powers which the constitutions, statutes, and common law of the United States and of this state expressly or impliedly grant or allow municipalities, as fully as though this charter specifically enumerated each of those powers; and

WHEREAS, the above referenced grant of power has been interpreted as conferring all legislative power on the City of Woodburn that is reserved to Oregon cities; and

WHEREAS, the Oregon Legislature enacted HB 3460 in 2013 (ORS 475.314) which requires the Oregon Health Authority to develop and implement a process to register Medical Marijuana Facilities; and

WHEREAS, in 2014 the Oregon Legislature enacted Senate Bill 1531, which specifically provides that an Oregon city has the power and authority to enact and impose reasonable regulations on the operation of Medical Marijuana Facilities; and

WHEREAS, under Oregon law, cities may regulate the operation and location of certain types of businesses within their jurisdiction except when such action has been specifically preempted by state statute; and

WHEREAS, in Marion County both the cities of Salem and Keizer have already enacted ordinances addressing Medical Marijuana Facilities that are similar to this Ordinance; and

WHEREAS, the City Council believes that it is in the interest of both the public and business owners to have Medical Marijuana Facilities subject to approximately the same regulations in Woodburn that they are in Salem and Keizer; and

WHEREAS, in *City of Cave Junction v. State of Oregon*, Josephine County Case No. 14CV0588, an Oregon Circuit Court ruled that the City of Cave Junction, a home rule municipality, was not preempted by HB 3460 and SB 1531 from regulating or prohibiting Medical Marijuana Facilities; and

WHEREAS, the Woodburn City Council wants to allow operation of Medical Marijuana Facilities in the City in ways that protect and benefit the public health, safety and welfare of existing and future residents and businesses; and

WHEREAS, the City Council finds that the unique characteristics of Medical Marijuana Facility operations and their potential impacts makes it necessary to establish particular time, place, and manner requirements for such operations and a separate permitting process for Medical Marijuana Facilities; **NOW, THEREFORE**,

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Purpose. The purpose of this Ordinance is to minimize any adverse public safety and public health impacts that may result from allowing Medical Marijuana Facilities in the City by adopting particular time, place and manner regulations as authorized under state statute and establishing a permitting process.

Section 2. Definitions.

- A. "Cash Accounting" means a cash basis system of accounting in which the Operator of an enterprise records revenue and expenses when they are paid, regardless of when goods are received or delivered.
- B. "City Administrator" means the City Administrator of the City of Woodburn or his/her designee.
- C. "Company Principal" means a Person who is an officer or director of a legal entity or has a controlling interest in the entity, through ownership or control of 10% or more of the stock in the entity or 10% or more of the total membership interest in the entity or 10% or more of the total investment interest in the entity.
- D. "Controlled Substances" means substances designated as Schedule I or Schedule II controlled substances in the Code of Federal Regulations Title 21, Chapter II, Part 1308.

- E. "Convicted" means found guilty by verdict or finding entered in a criminal proceeding in a court of competent jurisdiction.
- F. "Debt Financing" means secured or unsecured loans to provide funds for use in the Medical Marijuana Facility business, except for monies owed for the reasonable cost of goods or services received.
- G. "Facility or Facilities" means a Medical Marijuana Facility or Medical Marijuana Facilities.
- H. "Financial Interest" exists when a Person, the Person's immediate family, or a legal entity to which the Person is a Company Principal (1) receives or is entitled to receive directly or indirectly any of the profits of the Facility; (2) rents or leases real property to the Operator for use by the business; (3) rents or leases personal property to the Operator for a commercially unreasonable rate; or (4) lends or gives money, real property, or personal property to the Operator for use in the business.
- I. "Marijuana" means all parts of the plant of the Cannabis Moraceae, whether growing or not, the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin, as may be defined by Oregon Revised Statutes or as they currently exist or may from time to time be amended. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
- J. "Medical Marijuana" means all parts of marijuana plants that may be used to treat or alleviate a Medical Marijuana Qualifying Patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition.
- K. "Medical Marijuana Facility or Facilities" means a Medical Marijuana Facility that is registered by the Oregon Health Authority under ORS 475.300-475.346 and that sells, distributes, transmits, gives, dispenses or otherwise provides Medical Marijuana to qualifying patients.

- L. "Medical Marijuana Qualifying Patient" means a registry identification cardholder (Person who has been diagnosed by a physician as having a debilitating medical condition) as further defined by ORS 475.302(3) or the designated primary caregiver of the cardholder as defined by ORS 475.302(5).
- M. "Minor" means any Person under 18 years of age.
- N. "Operator" means the Person who is the proprietor of a Facility, whether in the capacity of Company Principal, owner, lessee, sub-lessee, mortgagee in possession, licensee or any other capacity. If the Operator is a corporation, the term Operator also includes each and every member of the corporation's Board of Directors whose directorship occurs in a period during which the Facility is in operation. If the Operator is a partnership or limited liability company, the term Operator also includes each and every member thereof whose membership occurs in a period during which the Facility is in operation.
- O. "Person" means natural Person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or any group or combination acting as a unit, including the United States of America, the State of Oregon and any political subdivision thereof, or the manager, lessee, agent, servant, officer or employee of any of them.
- P. "Premises" means a location registered by the State of Oregon as a Medical Marijuana Facility and includes all areas at the location that are used in the business operated at the location, including offices, kitchens, restrooms, storerooms, and including all public and private areas where individuals are permitted to be present.
- Q. "Public Property" means all City of Woodburn parks, and any real property with a Public Zone designation under the Woodburn Development Ordinance.

Section 3. Annual Permit Required. The Operator of any Medical Marijuana Facility in the City must possess a valid annual Medical Marijuana Facility permit issued under this Ordinance and must comply with the requirements of any and all state or local laws.

Section 4. Initial Permit Application Requirements.

- A. Application forms for Medical Marijuana Facility permits will be available at the Woodburn Finance Department. Applications for initial and renewal Medical Marijuana Facility permits must be submitted to the Finance Department and must be signed under penalty of perjury. A separate permit application must be submitted for each proposed Facility location. The application documents must include at least the following:
1. The location of the proposed Facility.
 2. The true names and addresses of the Persons or legal entities that have an ownership interest in the Facility; that have loaned or given money or real or personal property to the applicant for use by the Facility within the preceding year; or that have leased real property to the applicant for use by the Facility.
 3. A detailed description of the type, nature and extent of the enterprise to be conducted.
 4. A detailed description of the proposed accounting and inventory systems for the Facility.
 5. Certification that the proposed Facility is registered as an Oregon Medical Marijuana Facility pursuant to ORS 475.300-475.346.
 6. Certification that the proposed Facility has met all applicable requirements of the Woodburn Development Ordinance.
 7. Certification that all current fees and taxes owed have been paid.
 8. Detailed illustrations (to scale) of all proposed signage and location of such signage.
 9. Such other information deemed necessary by the City Administrator to conduct any investigation or background check (including the names and fingerprints) of the Operator(s), employees, volunteers, Persons with a Financial Interest, and Persons or entities providing Debt Financing for the Facility.

Section 5. Expiration and Renewal of Permits/Facility Permit Fees.

- A. At the time of submission of an initial Facility permit application, the applicant must pay a Medical Marijuana Facility permit application and investigation fee as provided by this Ordinance. No portion of the Medical Marijuana Facility permit fee is refundable in the event operation of the Facility is discontinued for any reason.
- B. A Facility permit terminates automatically on June 30 of each year, unless a permit renewal application is approved.
- C. A Facility permit terminates automatically if federal or state statutes, regulations or guidelines are modified, changed, or interpreted in such a way by state or federal law enforcement officials as to prohibit operation of the Facility under this Ordinance and the City shall not be liable to the permit holder for termination of the permit in this manner.
- D. A permit renewal application shall include information similar in nature to that provided on the permittee's initial permit application and must be submitted to the Finance Department no less than thirty (30) days prior to expiration of the permit. The permittee must pay a Medical Marijuana Facility permit renewal application and investigation fee at the time a permit renewal application is submitted.
- E. A non-refundable application/investigation fee of \$500 and a refundable \$1,500 registration fee shall be charged for a Medical Marijuana Facility permit application or an annual Medical Marijuana Facility permit renewal application. The registration fee shall be refunded to the applicant if an application is returned to the applicant as incomplete, if the City denies an application, or if an applicant withdraws an application. The registration fee will not be refunded to the applicant if the City suspends or revokes a permit for noncompliance with any City Ordinance or regulations, or violations of any state laws.
- F. In addition to the application/investigation fee and the registration fee, an appeal fee of \$750 shall be charged for all appeals under this Ordinance.

Section 6. Permit Conditions. Any Medical Marijuana Facility must comply with the following requirements, in addition to any other state or local requirements:

- A. The Facility must continue to be registered in good standing as an Oregon Medical Marijuana Facility pursuant to state law.
- B. The Facility must provide written notification to the City Administrator of any sanctions imposed by the Oregon Health Authority on the Operator and/or restrictions imposed by the Oregon Health Authority on the operation of the Facility. The required written notification shall be provided to the City Administrator within ten (10) calendar days after the Oregon Health Authority has imposed the sanction or restriction.
- C. The Facility must meet applicable laws and regulations, including, but not limited to zoning compliance, building and fire codes, including the payment of all fines, fees, and taxes owing to the City.
- D. The Facility must not manufacture or produce any extracts, oils, resins or similar derivatives of Marijuana on-site and must not use open flames or gases in the preparation of any products.
- E. Marijuana and tobacco products must not be smoked, ingested or otherwise consumed on the Premises of the Facility.
- F. Operating hours for retail sales to Medical Marijuana Qualifying Patients must be no earlier than 10:00 a.m. or later than 8:00 p.m. on the same day.
- G. The Facility must utilize an air filtration and ventilation system which, to the greatest extent feasible, confines all objectionable odors associated with the Facility to the Premises. For the purposes of this provision, the standard for judging "objectionable odors" shall be that of an average, reasonable Person with ordinary sensibilities after taking into consideration the character of the neighborhood in which the odor is made and the odor is detected.
- H. The Operator of the Facility must certify that adequate measures have been taken to protect the public from the Fungus *Aspergillus* and specify what measures have been taken.

- I. The Facility must provide for secure disposal of Marijuana remnants or by-products; such remnants or by-products shall not be placed within the Facility's exterior refuse containers.
- J. The Facility's location shall conform to all requirements of the Woodburn Development Ordinance.
- K. The Facility must not be co-located on the same tax lot or within the same building with any Marijuana social club, smoking club, or grow site.
- L. Signage shall not include logos or illustrations, and shall emphasize identification of the Premises without drawing undue attention.
- M. No Minor is allowed on the Premises unless the Minor is a Medical Marijuana Qualifying Patient and is accompanied by a parent, guardian, or caregiver whose purpose is to procure the Minor's Medical Marijuana.
- N. A Person with any felony convictions or a conviction for any drug related misdemeanor (including, but not limited to those under ORS 475) may not (1) be an Operator, Company Principal, employee, or volunteer of a Facility; or (2) have a Financial Interest in the Facility.
- O. The Facility must have an accounting system specifically designed for enterprises reliant on transactions conducted primarily in cash and sufficient to maintain detailed, auditable financial records. If the City Administrator finds the books and records of the Operator are deficient in any way or if the Operator's accounting system is not auditable, the Operator must modify the Facility's accounting system to meet the requirements of the City Administrator.
- P. The Facility must have a "cash drop safe" on site that is sufficient to secure all cash received.
- Q. Each Operator must keep and preserve for a period of at least three (3) years records containing at least the following information:
 - 1. Daily wholesale purchases (including grow receipts) and retail sales, including a cash receipts and expenses journal;
 - 2. State and federal income tax returns;

3. Names of and any aliases of the Operator;
 4. Names of and any aliases of employees/volunteers of the Facility;
 5. Names of and any aliases of Persons with a Financial Interest in the Facility; and
 6. The City Administrator may require additional information as he or she deems necessary.
- R. Each Facility must display its current permit inside the Facility in a prominent place easily visible to Persons conducting business in the Facility.
 - S. Persons conducting business in the Facility must display their Oregon Medical Marijuana Program card to gain entry to the Facility.
 - T. Sales or any other transfers of Marijuana products must occur completely inside the Facility building and must be conducted only between the Facility and Medical Marijuana Qualifying Patients. No walk-up or drive-through service is allowed.

Section 7. Background Checks. The Finance Department will send to the Police Department the information provided on each initial or renewal Facility permit application. The Police Department will conduct criminal background checks under ORS 181.534 to determine whether any Person therein (including, but not limited to, an Operator, Person with Financial Interest, Company Principal, employee or volunteer) has any felony convictions or convictions for drug related misdemeanors and inform the Finance Department whether or not all the Persons named in the permit application passed the required background checks. If, following an initial application or renewal, an additional person is proposed to be an Operator, Person with Financial Interest, Company Principal, employee or volunteer, then such person must pass the background check prior to assuming such position.

Section 8. Examination of Books, Records and Premises.

- A. To determine compliance with the requirements of this Ordinance, the Woodburn Development Ordinance, and any and all applicable regulations, the City Administrator may examine or cause to be examined by an agent or representative designated by the City Administrator, at any reasonable time, the Premises of

the Facility, including wastewater from the Facility, and any and all Facility financial, operational and Facility information, including books, papers, payroll reports and state and federal income tax returns. Every permittee is directed and required to furnish to the City Administrator the means, Facilities and opportunity for making such examinations and investigations.

- B. As part of investigation of a crime or violation of this Ordinance which law enforcement officials reasonably suspect has taken place on the Premises, the Police Department shall be allowed to view surveillance videotapes or digital recordings at any reasonable time.
- C. Without reducing or waiving any provisions of this Ordinance, the Police Department shall have the same access to the Facility, its records and its operations, as allowed to state inspectors. Denial or interference with access shall be grounds for revocation or suspension of a Facility permit.

Section 9. Administrative and Other Remedies for Noncompliance, Administrative Appeals and Penalties.

- A. The City Administrator may deny, suspend, or revoke a Facility permit for failure to comply with this Ordinance or rules adopted under this Ordinance, for submitting falsified information to the City or the Oregon Health Authority, or for noncompliance with any other City ordinances or regulations, or violation of any state laws.
 - 1. Any suspension or revocation pursuant to this section shall be in writing, setting forth the reasons therefor, and written notice shall be given to the permittee by first-class United States Mail at least ten (10) calendar days prior to effective date of the revocation or suspension.
 - 2. A decision to deny, suspend, or revoke a Facility permit may be appealed by filing a Notice of Appeal accompanied by the appeal fee of \$750 in writing physically delivered to the City Administrator on or before the effective date. Unless City Administrator has declared imminent danger to the public will exist, the City Administrator's decision to revoke or suspend is stayed pending appeal. The matter shall be heard by a Hearings Officer appointed by the City Council who shall determine, by preponderance of the evidence, whether the City Administrator's

decision should be upheld or reversed, or upheld in part and reversed in part. The hearing shall be conducted no later than sixty (60) days from the date of appeal, unless a different date is stipulated by the City and the applicant, or good cause is shown for setting the matter forward. Testimony at the hearing shall be taken upon oath or affirmation of the witnesses. The Hearings Officer shall consider only the matters set forth in the Notice of Appeal. The Findings and Decision of the Hearings Officer shall be served upon the appellant by first class mail within ten (10) days after the hearing concludes. The Hearings Officer decision shall be effective ten (10) days following the date of the decision. The Findings and Decision of the Hearings Officer shall be final and conclusive, subject only to writ of review under ORS 34.010 to 34.100, which shall be the sole remedy.

- B. In addition to the remedies of suspension and revocation, failure to comply with the requirements of this Ordinance constitutes a class 1 civil infraction under the Civil Infraction Ordinance. Each day in violation constitutes a separate offense. Company Principals, Operators, employees, and volunteers are jointly and severably liable for such offenses.
- C. The remedies provided herein are not exclusive and shall not prevent the City from exercising any other remedy available under the law, nor shall the provisions of this Ordinance prohibit or restrict the City or other prosecutor from pursuing criminal charges under state law or City ordinance. Such remedies include, but are not limited to, any equitable remedies such as temporary restraining orders or other injunctive relief.

Section 10. Confidentiality. Except as otherwise required by law, and provided by this Ordinance, it shall be unlawful for the City, any officer, employee or agent to divulge, release or make known in any manner any financial or employee information submitted or disclosed to the City under the terms of this Ordinance. Nothing in this section shall prohibit:

- A. The disclosure of the names and addresses of any Operator or provider of equity or Debt Financing for a Facility; or
- B. The disclosure of general statistics in a form which would prevent identification of financial information regarding a Facility Operator; or

C. The presentation of evidence to a court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the City under this Ordinance; or

D. The disclosure of information when such disclosure is required by public records law procedures.

Section 11. Severability. If any section, subsection, paragraph, sentence or word in this Ordinance is deemed to be invalid or beyond the authority of the City, either on its face or is applied, the invalidity of such provision shall not affect the other sections, subsections, paragraphs, sentences, or words of this Ordinance, and the application thereof; and to that end sections, subsections, paragraphs, sentences and words of this Ordinance shall be deemed severable.

Section 12. Emergency Clause. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, so that regulations applicable to Medical Marijuana Facilities can be adopted prior to the expiration of the moratorium on the siting of Medical Marijuana Facilities that the City Council imposed pursuant to state law, an emergency is declared to exist and this Ordinance shall take effect immediately upon passage by the Council and approval by the Mayor.

Approved as to form: _____
City Attorney Date

Approved: _____
Kathryn Figley, Mayor

Passed by the Council _____

Submitted to the Mayor _____

Approved by the Mayor _____

Filed in the Office of the Recorder _____

ATTEST: _____
Heather Pierson, City Recorder
City of Woodburn, Oregon